

# Inspector General

United States  
Department of Defense



DoD Needs to Improve Controls Over Economy Act  
Orders with U.S. Agency for International  
Development

Report Documentation Page			Form Approved OMB No. 0704-0188		
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE <b>14 AUG 2012</b>		2. REPORT TYPE		3. DATES COVERED <b>00-00-2012 to 00-00-2012</b>	
4. TITLE AND SUBTITLE <b>DoD Needs to Improve Controls Over Economy Act Orders with U.S. Agency for International Development</b>			5a. CONTRACT NUMBER		
			5b. GRANT NUMBER		
			5c. PROGRAM ELEMENT NUMBER		
6. AUTHOR(S)			5d. PROJECT NUMBER		
			5e. TASK NUMBER		
			5f. WORK UNIT NUMBER		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Department of Defense Office of Inspector General,4800 Mark Center Drive,Alexandria,VA,22350-1500</b>			8. PERFORMING ORGANIZATION REPORT NUMBER		
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)			10. SPONSOR/MONITOR'S ACRONYM(S)		
			11. SPONSOR/MONITOR'S REPORT NUMBER(S)		
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>47</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

## Additional Copies

To obtain additional copies of this report, visit the Web site of the Department of Defense Inspector General at <http://www.dodig.mil/audit/reports> or contact the Secondary Reports Distribution Unit [auditnet@dodig.mil](mailto:auditnet@dodig.mil).

## Suggestions for Audits

To suggest or request audits, contact the Office of the Deputy Inspector General for Auditing at [auditnet@dodig.mil](mailto:auditnet@dodig.mil), or by mail:

Department of Defense Office of Inspector General  
Office of the Deputy Inspector General for Auditing  
ATTN: Audit Suggestions/13F25-04  
4800 Mark Center Drive  
Alexandria, VA 22350-1500



## Acronyms and Abbreviations

ADA	Antideficiency Act
ASA/FM&C	Assistant Secretary of the Army (Financial Management and Comptroller)
CERP	Commander's Emergency Response Program
C-JTSCC	CENTCOM-Joint Theater Support Contracting Command
DFARS	Defense Federal Acquisition Regulation Supplement
DoD FMR	DoD Financial Management Regulation
EAO	Economy Act Order
FAR	Federal Acquisition Regulation
IA	Interagency Acquisition
MAAWS-Afghanistan	Money As A Weapon System-Afghanistan
MIPR	Military Interdepartmental Purchase Requests
OMA	Operations and Maintenance, Army
USAID	U.S. Agency for International Development
U.S.C.	United States Code
USCENTCOM	U.S. Central Command
USD/AT&L	Under Secretary of Defense for Acquisition, Technology, and Logistics
USD(C)/CFO	Under Secretary of Defense (Comptroller)/Chief Financial Officer
USFOR-A	U.S. Forces-Afghanistan



**INSPECTOR GENERAL**  
DEPARTMENT OF DEFENSE  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500

August 14, 2012

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (ACQUISITION,  
TECHNOLOGY, AND LOGISTICS)  
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/  
CHIEF FINANCIAL OFFICER, DOD  
COMMANDING GENERAL, U.S. CENTRAL COMMAND  
COMMANDING GENERAL, U.S. FORCES-AFGHANISTAN  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: DoD Needs to Improve Controls Over Economy Act Orders with U.S. Agency  
for International Development (Report No. DODIG-2012-117)

We are providing this report for review and comment. We considered management comments on a draft of this report when preparing the final report. U.S. Central Command and U.S. Forces-Afghanistan officials did not establish adequate controls over interagency acquisitions when transferring \$40.1 million in Commander's Emergency Response Program funds to the U.S. Agency for International Development (USAID) using three Economy Act Orders. DoD and USAID may have committed Antideficiency Act violations of \$27.6 million and USAID improperly used \$17.6 million of DoD funds.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The U.S. Central Command comments on Recommendation A.3.a, and the Assistant Secretary of the Army (Financial Management and Comptroller) comments on Recommendation B.2 were partially responsive. Therefore, we request the U.S. Central Command provide additional comments on Recommendation A.3.a, and the Assistant Secretary of the Army (Financial Management and Comptroller) provide additional comments on Recommendations B.2.a, B.2.b, and B.2.c by September 14, 2012.

If possible, send a portable document format (.pdf) file containing your comments to [audfmr@dodig.mil](mailto:audfmr@dodig.mil). Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-8938.

A handwritten signature in black ink, reading "Richard B. Vasquez".

Richard B. Vasquez, CPA  
Acting Assistant Inspector General  
Financial Management and Reporting







# Results in Brief: DoD Needs to Improve Controls Over Economy Act Orders with U.S. Agency for International Development

## What We Did

The objective of the audit was to determine whether U.S. Central Command and U.S. Forces-Afghanistan (USFOR-A) controls over the interagency transfer of Commander's Emergency Response Program (CERP) Funds to the U.S. Agency for International Development (USAID) were adequate to ensure compliance with Economy Act Order (EAO) requirements. Specifically, we reviewed three CERP funded EAOs totaling \$40.1 million that DoD placed with USAID in the fourth quarter of FY 2009.

## What We Found

CENTCOM-Joint Theater Support Contracting Command (C-JTSCC) and USFOR-A officials did not establish adequate controls over interagency acquisitions when transferring \$40.1 million in CERP funds to USAID using three EAOs. Specifically, C-JTSCC and USFOR-A officials did not:

- advance funds to USAID appropriately;
- monitor EAO execution adequately; and
- prevent USAID from using cost-plus-fixed-fee contracts that provided no incentives.

This occurred because DoD had conflicting guidance on advancing funds under EAOs and the EAOs did not clearly define roles and responsibilities or procedures for monitoring the execution of interagency agreements. C-JTSCC also did not properly review USAID contracts to determine if they would sufficiently meet DoD needs. As a result, U.S. Central Command and USFOR A will not receive the goods and services as ordered in the EAOs. Also, USAID spent funds on projects not authorized in the EAOs. Unless controls are improved, DoD is at increased risk of unmet performance when transferring to Department of State or USAID, a significant portion of the \$400 million of Afghanistan Infrastructure Funds appropriated for FY 2011 and the \$400 million authorized for FY 2012.

C-JTSCC potentially violated the Purpose Statute by inappropriately authorizing the transfer of \$27.6 million of CERP funds to USAID because the construction

projects primarily benefitted U.S. Forces. In addition, USAID officials inappropriately obligated \$9.6 million of CERP funds that were not a DoD bona fide need in FY 2009 and inappropriately obligated \$17.6 million of CERP funds on out-of scope projects that were not properly approved by DoD. As a result, C-JTSCC and USAID may have committed Antideficiency Act (ADA) violations and USAID improperly used DoD funds.

## What We Recommend

DoD Acquisition and Logistics officials and DoD Comptroller officials should update guidance to clarify that advance payments are not allowed for EAOs and to include procedures for properly monitoring interagency acquisitions. C-JTSCC and USFOR-A need to quickly update procedures and establish controls over the development and monitoring of EAOs. Army Comptroller officials should coordinate with DoD Comptroller officials to review potential ADA violations, and request that USAID return the \$17.6 million it used on out-of-scope projects.

## Management Comments and Our Response

DoD Acquisition and Logistics officials, DoD Comptroller officials, C-JTSCC officials, USFOR-A officials, and Army Comptroller officials provided comments, stating agreement with recommendations to update guidance for advance payments and interagency acquisitions, establish controls over EAOs, and review potential ADAs. We request additional comments from C-JTSCC on Recommendation A.3.a regarding inclusion of minimum procedures in the Command Acquisition Instruction update. We request additional comments from Army Comptroller on Recommendation B.2 regarding the performance of a joint ADA investigation with USAID and on monetary benefits located in Appendix C. Please see the recommendations table on the back of this page and provide comments by September 14, 2012.

## Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Under Secretary of Defense for Acquisition, Technology, and Logistics		A.2.a, A.2.b
Under Secretary of Defense (Comptroller)/Chief Financial Officer		A.1.a, A.1.b, A.1.c
U.S. Central Command	A.3.a	A.3.b.(1), A.3.b.(2), A.3.b.(3), A.3.b.(4), A.3.b.(5), A.3.b.(6), A.3.b.(7), A.3.c
U.S. Forces-Afghanistan		A.4, B.3
Assistant Secretary of the Army (Financial Management and Comptroller)	B.2.a, B.2.b, B.2.c	B.1.a, B.1.b, B.1.c

**Please provide comments by September 14, 2012.**

# Table of Contents

<b>Introduction</b>	1
Audit Objective	1
Background	1
Review of Internal Controls on Economy Act Orders	3
<b>Finding A. U.S. Central Command-Joint Theater Support Contracting Command and U.S. Forces-Afghanistan Did Not Adequately Control Interagency Acquisitions</b>	4
Federal and DoD Interagency Acquisition and Economy Act Order Guidance	4
Economy Act Order Roles and Responsibilities	5
Adequate Controls Not Established	6
DoD Did Not Receive Goods and Services As Intended	10
Delivery of Goods and Services for Future Interagency Agreements in Doubt	12
Further Steps That Could Be Taken to Protect U.S. Government's Interests in Afghanistan	13
Recommendations, Management Comments, and Our Response	14
<b>Finding B. Potential Funding Violations and Improperly Used Commander's Emergency Response Program Funds</b>	18
Fiscal Controls Over the Use of Government Funds	18
Potential Purpose Statute Violation	19
Potential Bona Fide Needs Rule and Recording Statute Violation	19
Potential Antideficiency Act Violations and Improper Use of Funds	22
Recommendations, Management Comments, and Our Response	23
<b>Appendices</b>	
A. Audit Scope and Methodology	25
Use of Computer-Processed Data	25
B. Prior Audit Coverage of Commander's Emergency Response Program and DoD Interagency Agreements	26
C. Summary of Potential Monetary Benefits	29
<b>Management Comments</b>	
Under Secretary of Defense (Acquisition, Technology, and Logistics)	30
Under Secretary of Defense (Comptroller)/Chief Financial Officer, DoD	32
U.S. Central Command	35
U.S. Forces-Afghanistan	37
Assistant Secretary of the Army (Financial Management and Comptroller)	38



# Introduction

## Audit Objective

Our audit objective was to determine whether U.S. Central Command (USCENTCOM) and U.S. Forces-Afghanistan (USFOR-A) controls over the interagency transfer of Commander's Emergency Response Program (CERP) Funds to the U.S. Agency for International Development (USAID) were adequate to ensure compliance with Economy Act Order (EAO) requirements and the timely and cost-effective delivery of goods and services ordered. Specifically, we reviewed three EAOs that USFOR-A placed with USAID in the fourth quarter of FY 2009 using CERP funds. See Appendix A for the audit scope and methodology and Appendix B for prior coverage related to the audit objective.

## Background

The Coalition Provisional Authority established CERP in 2003 to enable military commanders to respond to urgent humanitarian needs in Afghanistan and Iraq. Commanders use CERP to provide a rapid response and stabilization capability that is considered vital for improving security and implementing the counterinsurgency strategy. CERP is intended to be used for small scale (less than \$500,000) projects that benefit the local population in areas such as agriculture, education, healthcare, and sanitation. Projects costing more than \$500,000 are expected to be relatively few in number and require the approval of the theater CERP Program Manager, while projects costing more than \$2 million must be approved by the Commander, USCENTCOM.

The Ike Skelton National Defense Authorization Act (the Act) for Fiscal Year 2011 (Public Law 111-383) made available \$400 million of Operations and Maintenance, Army (OMA) funds<sup>1</sup> for FY 2011 CERP. The Act included a restriction stating that CERP funds may not be obligated or expended for an individual project if the project cost exceeds \$20 million. The Act also requires the Secretary of Defense to submit a written notice to the congressional defense committees containing details for projects costing \$5 million or more. Those details include a project description, budget, implementation timeline, and sustainment plans.

## *Economy Act*

The Economy Act, section 1535, title 31, United States Code (31 U.S.C. § 1535 [2007]), authorizes federal agencies to obtain goods or services from another federal agency through interagency acquisition (IA). The intent was to achieve economies of scale and eliminate overlapping activities in the government. Each EAO must be supported by a determination and finding that obtaining the goods or services from another federal agency is in the best interest of the government because the required goods or services cannot be obtained as conveniently or economically from a private source. EAOs cannot be used to evade conditions and limitations

---

<sup>1</sup> OMA funds are used to pay for expenses costing less than \$250,000 such as civilian salaries, supplies, materials, and maintenance of equipment. OMA funds are normally available for obligation for one fiscal year. Since October 1, 2002, section 2805(c), title 10, United States Code (10 USC § 2805(c)) permits minor construction projects costing less than \$750,000 to be funded by Operations and Maintenance appropriations. The dollar threshold increases to \$1,500,000 if the project is to resolve a condition that threatens life, health or safety.

imposed on the use of funds, including extending the period of funds availability. An EAO obligates the applicable appropriation of the requesting agency (the customer) upon acceptance of the order by the servicing agency (the performer). It is important that the requesting and servicing agencies reconcile the EAO obligation status and deobligate any unused funds before the end of the funds availability.

### ***Economy Act Orders***

In the fourth quarter of FY 2009, CENTCOM-Joint Theater Support Contracting Command (C-JTSCC) transferred CERP funds totaling \$40.1 million to USAID for IAs using three EAOs. The funds were to be used for the Uruzgan Two Bridges project, the Nine Bridges project, and the Bamyan to Doshi Road project. Figure 1 shows the breakout of CERP funding transferred to USAID by EAO.

**Figure 1. CERP Projects Transferred to USAID**

		
Uruzgan Two Bridges-Oshay \$15.5 million July 2009	Nine Bridges Project-Bridge #9 \$12.5 million August 2009	Bamyan to Doshi Road \$12.1 million September 2009

### ***Uruzgan Two Bridges Project***

According to the Uruzgan Two Bridges project EAO, DoD agreed to supply CERP funds to USAID for the construction of two permanent two-way traffic bridges in northern Uruzgan province. The EAO stated that the lack of river crossings over the Shakur and Helmand rivers isolated the northern Uruzgan province from the main provincial economic centers, reducing stability and unity within the province. Construction of one bridge over the Shakur River at Regak and one bridge over the Helmand River at Oshay would provide an economic link to the provincial economic centers and act as a key component of stability and unity in northern Uruzgan.

### ***Nine Bridges Project***

According to the Nine Bridges project EAO, DoD agreed to supply CERP funds to USAID for the construction of nine bridges along Highway 1 in Afghanistan, that were destroyed by anti-governmental elements. Highway 1, a vital economic trade link, is the primary route connecting the south of the country with both the capital (Kabul) and the central and northern provinces. Repair of the nine bridges would restore Highway 1's role as a stabilizing influence and economic bond between the southern, central, and northern provinces.

### ***Bamyan to Doshi Road Project***

According to the Bamyan to Doshi Road EAO, DoD agreed to supply CERP funds to USAID for grading, maintenance, and minor upgrades to the road. The EAO indicated the Bamyan to Doshi Road is part of an alternate route for the northeastern Ring Road that is a vital economic trade link as well as a key component to stability and unity in Afghanistan. The EAO also states that an alternate route is essential because the northeastern Ring Road is subject to winter weather, traffic closures due to accidents, and congestion, and is in need of major rehabilitation.

### **Review of Internal Controls on Economy Act Orders**

DoD Instruction 5010.40, “Managers’ Internal Control Program (MICP) Procedures,” July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provide reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses over the advancing, monitoring, and contracting of CERP funds transferred to USAID for the EAOs we examined. We also identified potential monetary benefits totaling \$17.6 million resulting from USAID’s potential violation of the Bona Fide Needs Rule and Recording Statute. We will provide a copy of the final report to the senior DoD officials responsible for managing EAOs and CERP funds.

# **Finding A. U.S. Central Command-Joint Theater Support Contracting Command and U.S. Forces-Afghanistan Did Not Adequately Control Interagency Acquisitions**

C-JTSCC and USFOR-A officials did not establish adequate controls over IAs when transferring \$40.1 million in CERP funds to USAID using three EAOs. Specifically, C-JTSCC and USFOR-A officials:

- advanced funds to USAID in violation of DoD 7000.14-R, “DoD Financial Management Regulation” (DoD FMR) and USFOR-A Publication 1-06 (Money As A Weapon System-Afghanistan) (MAAWS-Afghanistan);
- did not adequately monitor the execution of the EAOs to ensure that goods and services would be received as ordered; and
- allowed USAID to use cost-plus-fixed-fee contracts that provided no incentives for positive contractor performance or penalties for poor contractor performance.

This occurred because DoD had conflicting guidance on the advancement of funds for EAOs. In addition, C-JTSCC, USFOR-A, and USAID did not sufficiently define the roles and responsibilities for each agency or procedures for monitoring execution of interagency agreements in the EAOs. C-JTSCC also did not properly review USAID contracts to determine if they would sufficiently meet DoD needs. As a result, DoD did not receive:

- the Regak and Oshay Bridges as ordered for the \$15.5 million paid to USAID;
- five of nine bridges along Highway 1 in Afghanistan as ordered for the \$12.5 million paid to USAID; and
- the \$8.9 million in repairs and maintenance for the Bamyan to Doshi Road project as ordered from USAID.

Unless controls are improved, DoD is at increased risk of unmet performance when transferring to Department of State, and possibly USAID, a significant portion of the \$400 million of Afghanistan Infrastructure Funds appropriated for FY 2011 and the \$400 million authorized for FY 2012.

## **Federal and DoD Interagency Acquisition and Economy Act Order Guidance**

### ***Federal Interagency Acquisition and Economy Act Order Guidance***

The Economy Act, Title 31 U.S.C., Section 1535 provides authority for one federal agency to obtain goods or services from another through an Economy Act Order. The Office of Management and Budget’s “Improving the Management and Use of Interagency Acquisitions,”

June 6, 2008, explains the type of arrangement between USFOR-A and USAID as an assisted acquisition. The Office of Management and Budget guidance defines an assisted acquisition as one in which the servicing agency and requesting agency enter into an interagency agreement pursuant to which the servicing agency performs acquisition activities on the requesting agency's behalf, such as awarding a contract, task order, or delivery order.

### ***DoD Interagency Acquisition and Economy Act Order Guidance***

The DoD Federal Acquisition Regulation Supplement (DFARS) Section 217.5, the DoD FMR volume 11a, chapter 3, and the DoD Instruction 4000.19 prescribe policies and procedures applicable to transactions where goods or services are procured from other federal agencies under the Economy Act. The Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD[C]/CFO) is responsible for maintaining the DoD FMR and the Under Secretary of Defense for Acquisition, Technology & Logistics (USD/AT&L) is responsible for maintaining the DFARS and the DoD Instruction 4000.19. The FMR requires that every EAO be supported by a determination and finding to show that obtaining the goods or services from another federal agency is in the best interest of the government. The FMR also provides guidance on the use of funds and the required reconciliation of funds before the end of the period of availability. In addition, the MAAWS-Afghanistan, which is the standard operating procedure for CERP, establishes project evaluation and validation criteria to ensure the proper operation of CERP projects.

### **Economy Act Order Roles and Responsibilities**

C-JTSCC and USFOR-A were the requesting agencies in the EAOs. USAID was the servicing agency and the executor of the CERP projects under the EAOs.

### ***U.S. Central Command-Joint Theater Support Contracting Command's Role in Economy Act Orders***

In the planning process of the IA, C-JTSCC is responsible for ensuring sound business arrangements and stewardship of CERP fund transactions. When developing the contract, C-JTSCC has the responsibility to ensure that CERP transactions are fair, transparent, and accountable. C-JTSCC is responsible for constructing and signing the EAOs. C-JTSCC's signature serves as the obligation of the funds for the project according to the terms of the EAO. This obligation of funds includes the authorization to advance the funds to USAID. Throughout the course of project execution under an EAO, C-JTSCC has the responsibility to review any scope changes made by USAID and ensure that the revised scope will satisfy the original requirement under the EAO.

### ***U.S. Forces-Afghanistan's Role in Economy Act Orders***

USFOR-A is responsible for developing the requirement to be completed in the EAO.

USFOR-A, as the requesting agency, is responsible for choosing a servicing agency that has the authority, experience, and expertise to conduct the acquisition needed to obtain the goods and services. USFOR-A also has the responsibility to choose a servicing agency that can adhere to the DoD's laws and policies including any unique acquisition and fiscal requirements. USFOR-A

*USFOR-A also has the responsibility to choose a servicing agency that can adhere to the DoD's laws and policies including any unique acquisition and fiscal requirements.*

must also ensure that it monitors the servicing agency's progress to ensure that it receives the goods and services under the terms of the EAO. Like C-JTSCC, USFOR-A must review any scope changes to the project made by USAID and ensure that the revised scope will satisfy the original requirement requested under the EAO.

### ***U.S. Agency for International Development's Role in Economy Act Orders***

USAID, as the servicing agency, is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including having adequate statutory authority for the contractual action, and complying fully with the competition requirements. During the execution of an approved project under the EAO, USAID has the responsibility to request approval from C-JTSCC and USFOR-A prior to any proposed changes or modifications to the scope of work in the existing EAO.

### **Adequate Controls Not Established**

C-JTSCC and USFOR-A officials did not establish adequate controls over IAs when transferring \$40.1 million in CERP funds to USAID using three EAOs. Specifically, C-JTSCC and USFOR-A did not establish controls to: prevent advancing funds to USAID in violation of the DoD FMR and MAAWS-Afghanistan, ensure adequate review of the development and execution of the EAOs, and prevent the use of cost-plus-fixed-fee contracts that provided no incentives for positive contractor performance or penalties for poor contractor performance.

### ***Improperly Advanced Funds to U.S. Agency for International Development***

C-JTSCC and USFOR-A advanced funds to USAID in violation of the DoD FMR, volume 11a, chapter 3, and MAAWS-Afghanistan. DoD FMR states that unless specifically required by law, funds are not to be advanced to non-DoD federal entities. The three EAOs state that "upon the request by USAID, the Ordering Agency will provide funds to USAID in advance of receiving the requested goods and services." By agreeing to this language in the EAOs, C-JTSCC violated the DoD FMR guidance that specifically disallows advancing funds. C-JTSCC approved the EAOs that authorized the advance of \$40.1 million of CERP funds to USAID prior to USAID issuing task orders for work performed for all of the EAOs. In addition, USFOR-A indicated in the CERP tracking project checkbook that the projects were closed because the full funding had been disbursed to USAID. Consequently, subsequent troop rotations may not see the need to follow up on the status of these projects.

*...C-JTSCC violated the DoD FMR guidance that specifically disallows advancing funds.*



## **Conflicting Economy Act Order Guidance**

DoD had conflicting guidance on the advancement of funds for EAOs. C-JTSCC approved the EAOs that authorized the advance of \$40.1 million in CERP funds to USAID prior to performance of any of the work under the EAOs. DoD FMR, volume 11a, chapter 3, section 030502, states “Unless the DoD Component is specifically authorized by law, legislative action, or Presidential authorization, funds are not to be advanced to non-DoD federal entities, or be used to pay for advance billings without receipt of goods or services.”

*USD(C)/CFO personnel stated the intent of this guidance is to prevent the advancement of funds to non-DoD federal agencies under EAOs.*

USD(C)/CFO personnel stated the intent of this guidance is to prevent the advancement of funds to non-DoD federal agencies under EAOs. The FAR, section 17.5, and DFARS 217.5 implements the Economy Act provision but permits advance payments. DoD Instruction 4000.19, paragraph 4.6.3 also implements the Economy Act and permits advance payments. However, on March 1, 2007, the USD(C)/CFO issued a memorandum stating that all DoD components were to stop advancing funds to non-DoD federal entities unless the DoD entity is specifically authorized by law, legislative action, or Presidential authorization. DoD IG has previously identified weaknesses in the use of IAs that advanced funds to the Department of State.<sup>2</sup> In those cases, after receiving the advanced funds, the Department of State has not adequately provided the goods and services ordered according to the terms and conditions of the EAOs. In addition, USFOR-A’s MAAWS-Afghanistan standard operating procedure on the use of CERP funds issued December 2009 states that advancing funds is strictly prohibited.

USD(C)/CFO should coordinate with the USD/AT&L to reconcile the DoD FMR, DFARS, and DoD Instruction 4000.19 guidance related to making advance payments on EAOs and make necessary revisions to clearly state that advance payments are not allowed for EAOs. In addition, USFOR-A could have used either a reimbursement process or a direct cite<sup>3</sup> where USAID could directly charge the DoD line of accounting through the Intragovernmental Payment and Collection system. USD/AT&L should require that DoD agencies use either a reimbursement process or a direct cite when establishing EAOs with non-DoD agencies.

## **Inadequate Monitoring of the Execution of the Economy Act Orders**

USFOR-A did not adequately monitor the execution of the EAOs to ensure that goods and services would be received as ordered. USFOR-A’s inadequate monitoring of projects and lack of communication with USAID provided an oversight environment that allowed Louis Berger Group to perform poorly in executing the EAOs.

---

<sup>2</sup> DoD IG Report No. D-2010-042, “DoD Obligations and Expenditures of Funds Provided to the Department of State for the Training and Mentoring of the Afghan National Police,” February 9, 2010

<sup>3</sup> Direct cite is a citation of customer funds as the financing source on documents. When direct cite is used, all accounting is accomplished by the ordering activity.

In September 2010, USFOR-A officials stated that they were unaware of whether the Bamyan to Doshi Road and Nine Bridges projects were still ongoing. In addition, we requested evidence of correspondence between USFOR-A and USAID. USFOR-A did not have any evidence to support communication between them.

*In September 2010, USFOR-A officials stated that they were unaware of whether the Bamyan to Doshi Road and Nine Bridges projects were still ongoing.*

USFOR-A also poorly monitored the Regak and Oshay Bridge projects. USFOR-A could not provide evidence of official project status reporting. USFOR-A's monitoring consisted of responding to USAID's requests for additional funds to cover the mishandling of the projects and several months later to provide engineering support to the Louis Berger Group's subcontractor, Procon Afghanistan Construction.

USFOR-A increased oversight of the CERP projects in response to DoD IG inquiries. The increased oversight included performing a review of the Regak and Oshay Bridge projects, and inquiring about the status of CERP funds for both the Bamyan to Doshi Road and Nine Bridges projects. In addition, USFOR-A requested all contractual documentation related to the Regak Bridge, including contract modifications, and has maintained communication with USAID regarding Regak Bridge status updates.

### ***Economy Act Orders Lacked Defined Roles and Responsibilities***

C-JTSCC, USFOR-A, and USAID did not sufficiently define the roles and responsibilities for each agency in the EAOs. OMB guidance requires roles and responsibilities be clearly defined between the servicing agency and the requesting agency to ensure clarity before the agreement is entered, to include monitoring and fiscal requirements. C-JTSCC is responsible for constructing and signing the EAOs; however they did not ensure that the EAOs clearly defined the monitoring roles and responsibilities of the DoD or USAID. USFOR-A lacked current project documentation of the contract award, contract with the statement of work, payment vouchers, invoices, miscellaneous correspondence, and contract completion and closeout paperwork. USFOR-A should also have matched the statement of work in the EAO to the task order awards. USFOR-A did not review the task orders.

*USAID stated that they commingled CERP funds with their Economic Support Program funds.*

Also, USFOR-A should have requested payment vouchers, invoices, and accounting information for review to ensure that CERP funds were being properly used according to the EAOs. USAID stated that they commingled CERP funds with their Economic Support Program funds. USAID was not able to track CERP funds separately by contractual award or by accounting data.

The EAOs did not clearly state USFOR-A's responsibility to request this information or USAID's responsibility to provide it. This occurred as a result of insufficient training on the development of EAOs. C-JTSCC should ensure that its personnel are properly trained on the best practices for developing and executing EAOs. Also, C-JTSCC should ensure that all future EAOs have separately awarded contractual actions by the servicing agency to ensure that scope of work and funds are not commingled with servicing agency's projects. In addition, C-JTSCC should ensure that all applicable DoD regulatory language is in the interagency agreements.

### ***Lack of Guidance on Proper Project Monitoring***

USD/AT&L did not ensure that the DFARS contained standard operating procedures necessary to properly monitor the IAs. C-JTSCC did not ensure that the CENTCOM Contracting Command Acquisition Instruction contained guidance necessary to ensure that the necessary language was included in EAOs to aid proper monitoring of the IAs. USFOR-A did not ensure that the MAAWS-Afghanistan contained procedures necessary to ensure proper monitoring of projects completed by IAs. While DFARS points to DoD Instruction 4000.19 as supplemental guidance for intragovernmental support agreements, this Instruction does not provide specific guidance for tracking execution and termination of EAOs.

We recommend the USD/AT&L revise the DFARS to include procedures on how to properly monitor IAs to ensure the timely and cost-effective delivery of requested goods and services. At a minimum, these procedures should include collection and maintenance of project documentation such as contracts, task orders, statements of work, modifications, accounting data, payment vouchers, invoices, relevant correspondence, and contract completion and closeout paperwork. We also recommend that C-JTSCC include procedures to prevent advance payments and to clearly define roles and responsibilities to ensure proper monitoring of projects being completed by IAs in the CENTCOM Contracting Command Acquisition Instruction. In addition, we recommend that USFOR-A also include similar monitoring procedures in the MAAWS-Afghanistan.

### ***Lack of Performance Incentives in Economy Act Order Task Orders***

C-JTSCC and USFOR-A allowed USAID to use cost-plus-fixed-fee contracts that provided no incentives for positive contractor performance or penalties for poor contractor performance in obtaining construction services. Cost-plus-fixed-fee contracts provide the contractor only a minimum incentive to control costs. In addition, contractors benefit and receive additional fees when contracts have increased costs. In the cases of these EAOs, USAID's contractor has not fully delivered on any of the projects. The performance period on the EAOs was from September 2009 to December 2011, which also does not meet the CERP requirements of "urgent" or "immediate."

C-JTSCC did not properly review the USAID contract to be used for the assisted acquisition CERP projects to determine if it would sufficiently meet the needs of DoD. In addition, C-JTSCC did not evaluate whether the contractor could adequately perform on a CERP construction project that by definition is "urgent" and "immediate." Typically, Government agencies must use firm-fixed price contracts to acquire construction services. Firm-fixed price contracts provide the maximum incentive for contractors to keep costs down and deliver in a timely manner. C-JTSCC should ensure that EAO construction contracts provide the maximum performance incentives possible for construction services by using firm-fixed price contracts.

In performing their due diligence when entering the EAO with USAID, USFOR-A did not review the type of contract that USAID had with the prime contractor. Their lack of contract review resulted in USFOR-A's requirements being serviced using a cost-plus-fixed-fee contract which was not in the best interest of the DoD. In the future, we request that C-JTSCC document the review of the servicing agency's contract to determine if it sufficiently meets the needs of the requesting agency when participating in EAO assisted acquisitions.

## DoD Did Not Receive Goods and Services as Intended

As a result of the conflicting guidance, lack of monitoring, and inadequate review of the contract, DoD will not timely and cost-effectively receive the goods and services as ordered under the EAOs. In addition, USAID spent funds on projects not authorized in the EAOs (see Finding B for details on the funding violations).

### ***Regak and Oshay Bridge Projects***

USFOR-A ordered two permanent bridges under an EAO, but USAID delivered one bridge for the \$15.5 million paid. C-JTSCC authorized the transfer of \$15.5 million to USAID for two complete two-lane bridges. However, USAID delivered one single lane temporary bridge at Regak. In addition, the delivery of this bridge was dependent upon USFOR-A providing engineering support to the Louis Berger Group, which was not part of the original agreement.

*C-JTSCC authorized the transfer of \$15.5 million to USAID for two complete two-lane bridges. However, USAID delivered one single lane temporary bridge at Regak.*

USAID significantly changed the scope of the projects from what was agreed to in the EAO. USFOR-A did not formally approve the changes and was unaware of many of the changes that led to the significant shortfall between the requirements and the incomplete finished product. The poor project management resulted in:

- commingling of funds;
- installation of a temporary pedestrian bridge over fallen sections of the old Regak Bridge (see Figure 2);
- providing \$1.7 million for security of the fallen remnants of the Regak Bridge during a nine month period, in which limited worksite construction activity was performed; and
- clearing of the Chambarrak Pass, even though U.S. Government officials could not verify whether this task was a requirement or if the work was actually performed.

**Figure 2. Regak Foot Bridge**



Another factor that contributed to the difficulty in building the Regak and Oshay Bridges was the lack of contractor expertise. The prime contractor, Louis Berger Group, stated that the subcontractor in charge of the construction of the bridges, Procon Afghanistan Construction, did not have the technical expertise to complete the construction of the bridges and, therefore, required USFOR-A engineering assistance. On

December 15, 2011, USFOR-A finally opened the Regak Bridge, a one-lane prefabricated bridge (see Figure 3 for a picture of the nearly completed Regak Bridge). USAID did not return any of the \$15.5 million intended for the two, two-lane bridges.

**Figure 3. Nearly-Complete One-Lane Regak Bridge**



### ***Nine Bridges Project***

USFOR-A did not receive five of nine bridges along Highway 1 in Afghanistan as ordered for the \$12.5 million transferred to USAID. C-JTSCC authorized the transfer of \$12.5 million to USAID to repair or reconstruct these nine bridges. Despite having completely paid the CERP funds to the Louis Berger Group, USAID delivered only four of the nine bridges with the other five bridges terminated because of contractor non-performance. In a review of contractor performance dated November 16, 2011, for one of the unfinished bridges, the review states that Louis Berger Group estimated that the project was 78 percent complete.

*Despite having completely paid the CERP funds to the Louis Berger Group, USAID delivered only four of the nine bridges with the other five bridges terminated because of contractor non-performance.*

However, the review found that due to contractor actions, there was actually more work to be completed than there was 14 months prior to the November review,<sup>4</sup> making the actual percentage of completion less than zero. For another bridge, the review states, “The work that has been completed to date is of such poor quality as to be of questionable value. The prime contractor has demonstrated no ability to manage the project.” The report recommended that the construction on all five incomplete bridges be terminated for cause.

In July 2011, the Chief Financial Officer for Stability Operations for Regional Command-East at Bagram Airbase, Afghanistan, stated, “It is a waste of taxpayer money to continue a project where the implementer can’t do the work.” He continued by stating “This is a prime example of why Economy Act Orders of CERP to USAID are a bad idea - we lose management oversight but we’re still responsible for the outcome that we don’t really influence. The other history is that these funds were available at the very end of FY 2009 and my take is that we pushed them out in the most expeditious way possible to get them obligated in time, which was a[n] EAO to USAID. The results, like most projects that are rushed, are less than optimal.”

USAID was unable to provide us with sufficient project documentation for the nine bridges and, as a result, we could not determine if USAID properly paid any of the \$12.5 million of CERP

<sup>4</sup> During construction on one of the bridges, the contractor partially removed a portion of the bridge which led to the washing away of a span of the bridge that was supposed to be saved.

funds to contractors for costs associated with the construction of the nine bridges. See finding B for more information on possible Bona Fide Needs Rule and Recording Act Statute violations regarding this project.

### ***Bamyan to Doshi Road Project***

USFOR-A will not receive the repairs and maintenance for the Bamyan to Doshi Road project as ordered for the \$12.1 million transferred to USAID. DoD only received approximately \$3.0 million (25 percent) worth of winter road maintenance. On December 23, 2010, USAID unilaterally decided to use the remaining \$8.9 million<sup>5</sup> for community development projects identified by the Louis Berger Group which were not in the scope of the original EAO.

*...USAID unilaterally decided to use the remaining \$8.9 million for community development projects identified by the Louis Berger Group which were not in the scope of the original EAO.*

USFOR-A provided the full funding amount to USAID for rough grading and winter maintenance of the road for the fall of 2009 through the spring of 2010. However, contract documentation shows that USAID changed the scope of work to 25 community development projects (later reduced to 12 projects) which included 4 one-way vehicle bridges, 8 Micro-Hydro Power Plants, and 7 Water Supply, Flood Control, and Wells projects. These projects were based on the Louis Berger Group's Project Assessment Report dated June 2010. A portion of the costs was also for security at the locations of these projects. When asked for supporting financial documentation of the projects, USAID stated that they had to rely on the prime contractor to provide documentation to support the project costs due to CERP funds being comingled with other USAID funds. See Finding B for more information on a possible Bona Fide Needs Rule violation regarding the 12 community development projects.

## **Delivery of Goods and Services for Future Interagency Agreements in Doubt**

Unless controls are improved, the portion of the \$800 million of FYs 2011 and 2012 Afghanistan Infrastructure Fund that DoD transfers to the Department of State, and possibly USAID, will be at risk of not meeting DoD needs. The Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383) established the Afghanistan Infrastructure Fund to allow DoD and Department of State to carry out large scale infrastructure projects. As of October 2011, at least \$131 million (and possibly another \$53 million) of the \$400 million of FY 2011 Afghanistan Infrastructure Funds will be transferred from DoD to USAID potentially under EAOs. To institute proper controls over the transfer and execution of the funds on EAOs and ensure timely and cost-effective delivery of goods and services, it is imperative that C-JTSCC establish a quality control oversight program to:

- detect and prevent the use of advance payments to servicing agencies for projects executed through EAOs;

---

<sup>5</sup> The total \$11.9 million paid to the contractor for this project is \$0.2 million less than the \$12.1 million transferred to USAID for the project. The difference represents USAID's project management support and overhead costs.



- develop EAOs that comply with the Office of Management and Budget's requirement to clearly define servicing agency and requesting agency roles and responsibilities before the agreement is signed;
- document the review of the servicing agency's contract to determine if it sufficiently meets the needs of the requesting agency;
- ensure that contracts issued under EAOs provide the maximum performance incentives possible for construction services by using firm-fixed price contracts;
- ensure that EAOs have separately awarded task orders by the servicing agency to ensure that the scope of work and funds are not commingled with servicing agency's projects;
- ensure that EAOs include language that requires the servicing agency to adhere to DoD regulations; and
- provide training on these controls to contracting personnel involved in the development and execution of EAOs.

C-JTSCC should not transfer future funds to Department of State or USAID until adequate controls are installed for EAOs and continuous training occurs for DoD personnel on oversight of EAOs and related internal controls.

## **Further Steps That Could Be Taken to Protect U.S. Government's Interests in Afghanistan**

USFOR-A and USAID did not protect the U.S. Government's interests by securing performance bonds from Louis Berger Group for the projects under the three EAOs or holding them accountable for continued performance issues. We briefed these major issues to the USAID Inspector General and other responsible USAID components. In response to the problems that we have identified, the USAID Inspector General initiated review number FF101712 on October 25, 2011, to look at the three EAOs.

### ***Performance Bonds Needed to Protect Taxpayer Money***

USFOR-A and USAID did not have performance bonds in place to protect the U.S. Government from damages against poor performance of the prime contractor, Louis Berger Group. FAR Part 28.102-1 covers performance bonds and other protections for construction contracts. We requested information from USAID related to performance bonds that would protect USAID from Louis Berger Group's non-performance on the contracts. USAID representatives stated that they did not have performance bonds and did not collect retention fees from Louis Berger Group. However, Louis Berger Group did have performance bonds with some of their subcontractors, meaning that if the subcontractor defaulted on construction performance, Louis Berger Group would receive the performance bond. On January 18, 2012, we presented our concerns about the performance bonds to USAID officials responsible for activities in Afghanistan. USAID Inspector General is currently performing an audit following up on many of our concerns under project number FF101712. USAID Inspector General will review whether

CERP funded projects were used for their intended purposes and review for compliance with applicable laws and regulations as they related to USAID activities for the CERP projects.

### ***DoD and U.S. Agency for International Development Need to Hold Contractors Accountable***

USAID's contractor for performance of these task orders has shown a pervasive lack of controls over subcontractor performance and project costs that, in conjunction with past illegal activity, generate questions of whether the contractor should be suspended or debarred. On November 5, 2010, former Louis Berger Group executives pleaded guilty to conspiring to defraud the government with respect to payments for work performed in Iraq and Afghanistan. In addition, Louis Berger Group resolved criminal and civil fraud charges related to their Chief Executive Officer. Louis Berger Group also had to submit to independent monitoring, performed by the Defense Contract Audit Agency, for contracts awarded under the Afghanistan Infrastructure Rehabilitation Program from 2006 to 2008. USAID Inspector General's audit of USAID's use of CERP funds will help answer whether USAID should seek suspension or debarment of the contractor.

## **Recommendations, Management Comments, and Our Response**

**A.1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer coordinate with the Under Secretary of Defense for Acquisition, Technology, and Logistics to:**

**a. Revise the Defense Federal Acquisition Regulation Supplement to clearly state that advance payments are not allowed for Economy Act Orders with non-DoD agencies.**

**b. Revise DoD 7000.14-R, "DoD Financial Management Regulation" guidance to clearly state that advance payments are not allowed for Economy Act Orders with non-DoD agencies.**

**c. Revise DoD Instruction 4000.19 guidance to clearly state that advance payments are not allowed for Economy Act Orders with non-DoD agencies.**

### ***Under Secretary of Defense (Comptroller)/Chief Financial Officer Comments***

The Deputy Chief Financial Officer, DoD, agreed with Recommendations A.1.a, A.1.b, and A.1.c and stated that his office will coordinate with the Office of USD/AT&L to assist Defense Procurement and Acquisition Policy with referencing the DoD FMR, volume 11a, chapter 3, in the DFARS and DoD Instruction 4000.19.

### ***Our Response***

The Deputy Chief Financial Officer, DoD, comments to Recommendations A.1.a, A.1.b, and A.1.c were responsive and the proposed and completed actions will meet the intent of the recommendations. In March 2012, USD(C)/CFO updated DoD FMR, volume 11a, chapter 3, to

improve controls over advance payments for EAOs and to mitigate the risk associated with making advance payments to non-DoD agencies.

**A.2. We recommend the Under Secretary of Defense (Acquisition, Technology & Logistics) revise the DoD Federal Acquisition Regulation Supplement to:**

**a. Require that DoD agencies use either a reimbursement process or a direct cite when establishing EAOs with non-DoD agencies.**

**b. Include procedures on how to properly monitor interagency acquisitions. At a minimum, these procedures should include collection and maintenance of project documentation such as contracts, task orders, statements of work, modifications, accounting data, payment vouchers, invoices, relevant correspondence, and contract completion and closeout paperwork.**

***Under Secretary of Defense (Acquisition, Technology, & Logistics)  
Comments***

The Director, Defense Procurement and Acquisition Policy, agreed with Recommendation A.2.a and stated that his office will coordinate with USD(C)/CFO to revise the DFARS to reference the policy of the DoD FMR on the use of direct cite or reimbursement processes under EAOs with non-DoD agencies by October 1, 2012. The Director partially agreed with Recommendation A.2.b and stated that his office will update the Procedures, Guidance, and Information supplement of the DFARS to include a section on the proper monitoring of interagency acquisitions by October 1, 2012.

***Our Response***

The Director, Defense Procurement and Acquisition Policy, comments to Recommendations A.2.a and A.2.b were responsive and the stated actions will meet the intent of the recommendations.

**A.3. We recommend the Commanding General, CENTCOM-Joint Theater Support Contracting Command:**

**a. Revise the CENTCOM Contracting Command Acquisition Instruction to include guidance on the proper development of Economy Act Orders as identified in recommendations A.3.b(1) through A.3.b(6) and to aid proper monitoring of the interagency acquisitions.**

**b. Establish a quality control oversight program for Economy Act Orders including procedures to:**

**(1) Detect and prevent the use of advance payments to servicing agencies for projects executed through Economy Act Orders.**

**(2) Develop Economy Act Orders that comply with the Office of Management and Budget's requirement to clearly define servicing agency and requesting agency roles and responsibilities before the agreement is signed.**

**(3) Document the review of the servicing agency's contract to determine if it sufficiently meets the needs of the requesting agency.**

**(4) Ensure that contracts issued under Economy Act Orders provide the maximum performance incentives possible for construction services by using firm-fixed price contracts.**

**(5) Ensure that all future Economy Act Orders have separately awarded task orders by the servicing agency to ensure that the scope of work and funds are not commingled with servicing agency's projects.**

**(6) Evaluate the servicing agency's ability to comply with DoD regulations and policies, including any unique acquisition and fiscal requirements and ensure required DoD regulations and policies are included in all Economy Act Orders.**

**(7) Provide training related to Recommendations A.3.b(1) through A.3.b(6) to contracting personnel involved in the development and execution of Economy Act Orders.**

**c. Consider refraining from transferring future Commander's Emergency Response Program and Afghanistan Infrastructure Funds to Department of State or U.S. Agency for International Development until adequate controls are installed for Economy Act Orders and continuous training occurs for DoD personnel on oversight of Economy Act Orders and related internal controls.**

### ***CENTCOM-Joint Theater Support Contracting Command Comments***

The Commander, C-JTSCC, agreed with Recommendations A.3.a and A.3.b and stated that C-JTSCC will update the Command Acquisition Instruction to include guidance on the proper development of EAOs within 90 days of his June 4, 2012, response. The Commander also agreed to establish an interim quality control oversight program for EAOs and stated that C-JTSCC will comply with the DFARS Interagency Acquisitions monitoring procedures that are scheduled to be updated. Finally, the Commander agreed with Recommendation A.3.c and stated that C-JTSCC will consider refraining from transferring future funding until adequate controls are in place for EAOs.

### ***Our Response***

The Commander, C-JTSCC, comments to Recommendations A.3.b and A.3.c were responsive and the stated actions will meet the intent of the recommendations. The Commander's comments to Recommendation A.3.a were partially responsive and we request that the Commander provide comments to clarify whether the procedures listed in Recommendations A.3.b.(1) – A.3.b.(6) will be included in the Command Acquisition Instruction update.

**A.4. We recommend the Commanding General, United States Forces-Afghanistan revise USFOR-A Publication 1-06 (Money As A Weapon System-Afghanistan) to include procedures for proper monitoring of projects being completed by interagency acquisitions.**

### ***U.S. Forces-Afghanistan Comments***

The Colonel, USFOR-A Civil Affairs Branch, agreed with Recommendation A.4 and stated that USFOR-A will update the USFOR-A Publication 1-06 (Money As A Weapon System-Afghanistan) CERP Standard Operating Procedures to include proper monitoring of projects being completed by interagency acquisitions after the DoD FMR revisions are completed.

### ***Our Response***

The Colonel, USFOR-A Civil Affairs Branch's comments to Recommendation A.4 was responsive and the proposed action will meet the intent of the recommendation.

## **Finding B. Potential Funding Violations and Improperly Used Commander's Emergency Response Program Funds**

C-JTSCC officials potentially violated the Purpose Statute when they inappropriately approved the transfer of \$27.6 million of CERP funds to USAID in FY 2009 because the projects primarily benefitted U.S. Forces. USAID officials inappropriately obligated \$9.6 million of FY 2009 CERP funds for unauthorized USAID projects whose requirements were not a DoD bona fide need in FY 2009. Additionally, USAID inappropriately obligated \$17.6 million of CERP funds for projects that were not approved by C-JTSCC and USFOR-A and were outside the original scope of the approved EAOs. As a result, C-JTSCC and USAID may have committed ADA violations. USAID should also return the \$17.6 million of improperly used DoD funds for work that did not address DoD needs.

### **Fiscal Controls Over the Use of Government Funds**

#### ***Purpose Statute***

According to the Purpose Statute, section 1301(a), title 31, United States Code (31 U.S.C. § 1301(a) [2007]), "Appropriations shall be applied only to the objects for which the appropriations were made except otherwise provided by law." The DoD FMR, volume 12, chapter 27, states, "Appropriated funds made available for the CERP shall not be used for the following purposes: (A) Direct or indirect benefit to U.S., coalition, or supporting military personnel..."

#### ***Bona Fide Needs Rule***

According to the Bona Fide Needs Rule, 31 U.S.C. § 1502 (2007), "The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability..." The DoD FMR, volume 11a, chapter 3, states, "Economy Act orders citing an annual or multiyear appropriation must serve a bona fide need arising, or existing, in the fiscal year (or years) for which the appropriation is available for obligation."

#### ***Recording Statute***

According to the Recording Statute, 31 U.S.C. § 1501 (2007), "An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of—

(1) a binding agreement between an agency and another person (including an agency) that is—

(A) in writing, in a way and form, and for a purpose authorized by law; and

(B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided;"



## **Potential Purpose Statute Violation**

C-JTSCC officials potentially violated the Purpose Statute when they approved the transfer of \$27.6 million of CERP funds for three projects under two EAOs that primarily benefitted U.S. Forces and were not for urgent humanitarian needs. The primary purpose of CERP projects should be for urgent humanitarian needs of Afghan people and not for the benefit of U.S. Forces. DoD Instruction 7000.14-R, “DoD Financial Management Regulation,” (DoD FMR), volume 12, chapter 27, states CERP shall not be used for the direct or indirect benefit to U.S., Coalition, or supporting military personnel. Although the EAOs state that the projects will benefit the local population (see Background pages 2-3), the statements of work contained within contract task orders for the projects indicated that the primary purpose of the construction projects was for the benefit of U.S. Forces.

- The statement of work for the \$15.5 million Uruzgan Bridges projects stated that the construction of the bridges in the Uruzgan Province was “essential for their [USFOR-A] efforts in resisting Anti-Government Elements in the area.”
- The statement of work for the \$12.1 million Bamyan to Doshi Road project stated that the objective of the construction was to “upgrade the Bamyan–Doshi Road to allow this road to be an alternative to the Salang Pass to support [U.S.] military supply traffic during the winter of 2009/2010 in advance of the main road upgrade to be completed in 2012.”

Because these projects were clearly for the direct or indirect benefit to U.S., Coalition, or supporting military personnel, C-JTSCC officials should not have used CERP funds. In addition, the ASA/FM&C should perform an investigation of the potential violation of the Purpose Statute to determine whether an ADA violation occurred.

## **Potential Bona Fide Needs Rule and Recording Statute Violation**

USAID officials potentially violated the Bona Fide Needs Rule because they inappropriately obligated \$9.6 million of FY 2009 CERP funds for unauthorized USAID projects whose requirements were not a DoD bona fide need in FY 2009. In addition, USAID potentially violated the Recording Statute and the Economy Act by obligating \$17.6 million of CERP funds on projects that were not properly approved by C-JTSCC and USFOR-A and were outside the original scope of the approved EAOs. See the Table and the follow-on discussion for a summary of the potential funding violations related to the three EAOs we reviewed.

**Table: C-JTSCC and USAID Potential Funding Violations (millions)**

Transferred CERP Project	Potential ADA Violations		Potential Recording Statute Violation	Request Funds be Returned to DoD
	Purpose Statute Violation by C-JTSCC	Bona Fide Needs Rule Violation by USAID		
Uruzgan Two Bridges Project				
Regak Bridge	\$ 7.5	-	-	-
Oshay Bridge	8.0	-	\$ 8.0	\$ 8.0
Bamyan to Doshi Road Project				
Road Construction/Winter Maintenance (FYs 2010/2011)	3.2	-	-	-
Community Development Projects	8.9	\$ 8.9	8.9	8.9
Nine Bridges Project				
Nine Bridge Reconstruction	-	-	-	-
Emergency or Urgent Works	-	0.7	0.7	0.7
Total	\$ 27.6	\$ 9.6	\$ 17.6	\$ 17.6

***Uruzgan Two Bridges Project***

In July 2009, C-JTSCC and USAID approved an EAO in which C-JTSCC authorized the transfer of \$15.5 million of CERP funds for USAID to construct two bridges, the Regak Bridge and the Oshay Bridge. DoD provided funding for the two separate bridges using two separate Military Interdepartmental Purchase Requests (MIPRs)--a \$7.5 million MIPR for the Regak Bridge and an \$8.0 million MIPR for the Oshay Bridge. In December 2011, the construction of the Regak Bridge was completed. As discussed in Finding A, USAID modified the task orders from the initial EAO, to commingle the funds from the two separate MIPRs and apply the entire \$15.5 million to the Regak Bridge. A MIPR is a legal binding written agreement required by the Recording Statute setting forth the duties of the parties to the agreement and permitting the obligation of funds.

*...USAID improperly used the \$8.0 million from the Oshay Bridge MIPR by applying it to the construction of the Regak Bridge.*

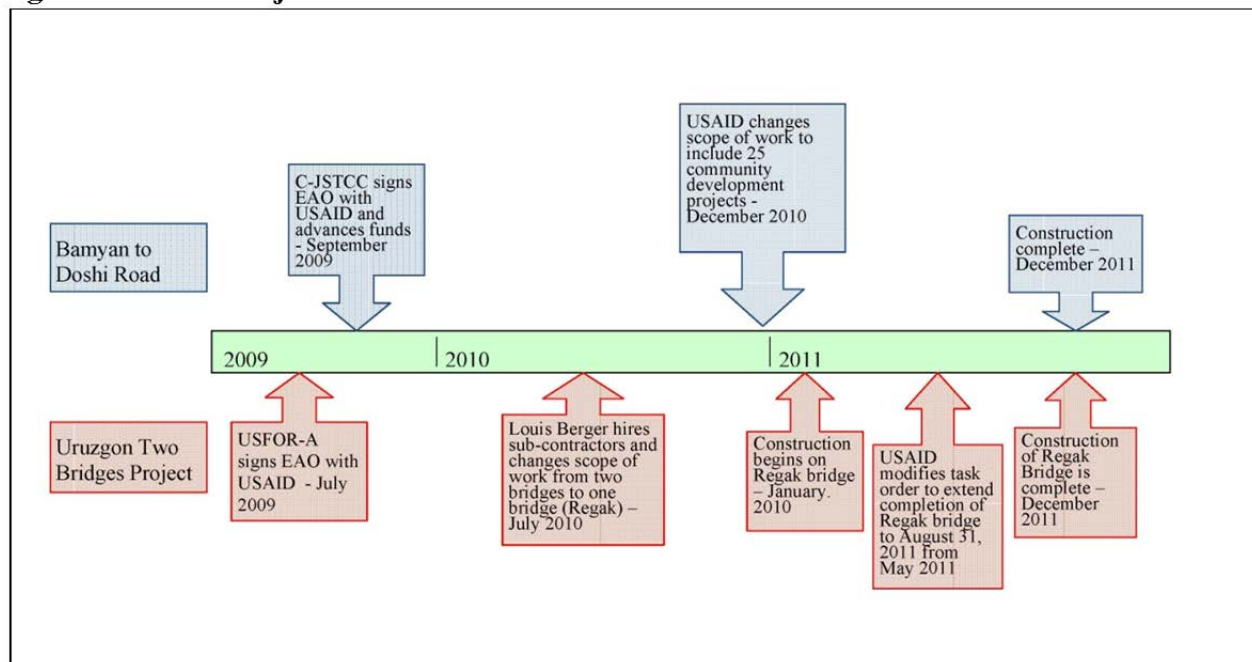
USAID potentially violated the Recording Statute by not obligating the funds on the project for the agreed purpose. It also may have violated the Economy Act, 31 U.S.C. § 1535(d) (2007), by not returning the funds that were not used for the agreed upon purpose by the end of the period of availability of those funds. As a result, USAID improperly used the \$8.0 million from the Oshay Bridge MIPR by applying it to the construction of the Regak Bridge. USAID should return these improperly used funds to DoD.

## Bamyan to Doshi Road Project

In September 2009, C-JTSCC and USAID approved an EAO in which C-JTSCC authorized the transfer of \$12.1 million of CERP funds for USAID to perform grading, maintenance, and minor upgrades to the Bamyan to Doshi Road. USAID obligated \$3.2 million of the \$12.1 million to perform road maintenance in FYs 2010 and 2011. As discussed in Finding A, on December 23, 2010, USAID improperly modified task order 26 to use the remaining \$8.9 million on community development projects without proper approval from C-JTSCC and USFOR-A. The construction of the Bamyan to Doshi Road project was completed December 14, 2011. The community development projects were not included within the initial \$12.1 million EAO and were not established or approved as a DoD bona fide need in FY 2009. As a result, USAID potentially violated the Bona Fide Needs Rule by inappropriately changing the scope of work in December 2010 and obligating \$8.9 million for out-of-scope community development projects. Because the scope change was outside of the EAO and USAID did not receive proper approval from C-JTSCC and USFOR-A, this change in scope was also a violation of the Recording Statute and of the Economy Act. USAID should return the \$8.9 million of improperly used funds to DoD. In addition, the Assistant Secretary of the Army (Financial Management and Comptroller) (ASA/FM&C) should coordinate with the Inspector General, USAID in order to perform a joint investigation of the potential violation of the Bona Fide Need Rule to determine whether an ADA violation occurred. See Figure 4 for a timeline of events related to the Uruzgan Two Bridges project and the Bamyan to Doshi Road project.

*...USAID potentially violated the Bona Fide Needs Rule by inappropriately changing the scope of work in December 2010 and obligating \$8.9 million for out-of-scope community development projects.*

**Figure 4. CERP Project Timelines**



### **Nine Bridges Project**

In August of 2009, C-JTSCC and USAID approved an EAO in which C-JTSCC authorized the transfer of \$12.5 million of CERP funds for USAID to reconstruct the nine bridges along Highway 1 in Afghanistan that were destroyed in 2008 by anti-government elements. On

September 27, 2009, USAID obligated \$11.7 million of the \$12.5 million under modification 4 to task order 14 for the reconstruction of the 9 bridges. Also on September 27, 2009, USAID issued

*...because USAID did not have a binding written agreement for this change in scope, this was a potential violation of the Recording Statute and of the Economy Act.*

modification 5 to task order 14 to obligate the remaining \$0.7 million of transferred funds for “Emergency or Urgent Works to be performed.” This change was not included within the initial \$12.5 million EAO and was not established or approved as a DoD bona fide need in FY 2009. As a result, USAID may have violated the Bona Fide Needs Rule. In addition, because USAID did not have a binding written agreement for this change in scope, this was a potential violation of the Recording Statute and of the Economy Act. USAID should return the \$0.7 million of improperly used funds to DoD. In addition, the ASA/FM&C should coordinate with the Inspector General, USAID in order to perform a joint investigation of the potential violation of the Bona Fide Needs Rule to determine whether an ADA violation occurred.

### **Potential Antideficiency Act Violations and Improper Use of Funds**

C-JTSCC potentially violated the Purpose Statute when they transferred \$27.6 million of CERP funds to USAID in FY 2009 for major construction projects that were primarily for the benefit of U.S. Forces. In addition, the ASA/FM&C should perform an investigation of the potential violation of the Purpose Statute to determine whether an ADA violation occurred. USAID also may have violated the Bona Fide Needs Rule by obligating \$9.6 million of FY 2009 CERP funds towards unauthorized requirements developed by USAID in FY 2010. Non-compliance with the Bona Fide Needs Rule and Purpose Statute may lead to an ADA violation. In addition, USAID may have violated the Recording Statute by obligating \$17.6 million of CERP funds on projects outside the original scope of the approved EAOs and not approved by C-JTSCC and USFOR-A. USAID used the DoD funds for its own projects and goals. USAID needs to return the \$17.6 million of DoD funds so that they can be used to support the goals of CERP.

The ASA/FM&C should request that these funds be returned by USAID, establish a process for tracking that these funds are returned or have USAID provide evidence that funds were used to meet the intent of the EAOs, and identify and transmit the report to the appropriate USAID Office for comment. The ASA/FM&C should also coordinate with the Inspector General, USAID, in order to perform a joint investigation of the potential \$9.6 million USAID ADA violation and of the \$17.6 million of funds USAID obligated outside the scope of the EAOs. In addition, USFOR-A should coordinate with USAID to establish controls to better track the disposition of CERP funds, ensure their legal use, and monitor changes in scope.

## **Recommendations, Management Comments, and Our Response**

**B.1 We recommend the Assistant Secretary of the Army (Financial Management and Comptroller):**

**a. Report a potential Antideficiency Act violation and initiate a preliminary investigation in accordance with DoD Regulation 7000.14-R, “Financial Management Regulation,” volume 14, chapter 3, “Preliminary Reviews of Potential Violations.”**

**b. If the investigation determines that a reportable Antideficiency Act violation has occurred, conduct a formal investigation to determine responsible officials and recommend appropriate corrective actions.**

**c. Submit formal report to Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer and provide results to the DoD Office of Inspector General.**

**B.2 We recommend that the Assistant Secretary of the Army (Financial Management and Comptroller) coordinate with the Inspector General, United States Agency for International Development in order to perform a joint investigation of the potential \$9.6 million Antideficiency Act violation of the Bona Fide Needs Rule and of the potential \$17.6 million Antideficiency Act violation of the Recording Statute. Specifically, they should investigate the following amounts and take the appropriate action for:**

**a. \$8.0 million not spent on the Oshay Bridge.**

**b. \$8.9 million spent on community development projects.**

**c. \$0.7 million spent on generic work without considering Economy Act limitations.**

### ***Department of the Army Comments***

The Deputy Assistant Secretary of the Army (Financial Operations) generally agreed with Recommendations B.1 and B.2, stating they are directing the U.S Army Central Command to report a potential ADA violation and initiate a preliminary investigation. The Deputy also stated that the investigation will require USFOR-A to coordinate with USAID, but will not conduct a joint investigation with them, and that his office will provide the results of the formal investigation to Office of the Secretary of Defense (Comptroller) and the DoD OIG.

### ***Our Response***

The Deputy Assistant Secretary of the Army (Financial Operations) comments on recommendations B.1.a, B.1.b, and B.1.c were responsive and the stated actions meet the intent of the recommendations. The Deputy’s comments on recommendations B.2.a, B.2.b, and B.2.c were partially responsive. The Deputy agreed to direct U.S. Army Central Command to initiate a preliminary investigation of the potential ADA violations; however, did not agree to conduct a joint investigation with USAID. Without U.S. Army Central Command performing a joint investigation with USAID, the ADA investigation may not include documents supporting the

ADA that are in the possession of USAID, such as contracts, invoices, and receiving reports. We recommend the Deputy reconsider his position to not perform a joint investigation with USAID and provide comments on the final report.

**B.3 We recommend the Commanding General, U.S. Forces-Afghanistan coordinate with United States Agency for International Development to establish controls to better track the disposition of Commander's Emergency Response Program funds, ensure their legal use and monitor changes in scope.**

### ***U.S. Forces-Afghanistan Comments***

The Colonel, USFOR-A Civil Affairs Branch, agreed with Recommendation B.3 and stated that CERP theater managers will develop a policy letter detailing procedures for interagency acquisitions for future projects. The policy will reiterate the regulatory guidance that must be followed when using CERP funds. CERP theater managers will also research the Combined Information Data Network Exchange database and coordinate with USAID contacts to identify CERP project transfers to USAID that are currently in-progress, other than those identified in this audit. The identified projects will be reviewed to determine approved use of CERP funds, disposition, and any changes to scope during the project execution.

### ***Our Response***

The Colonel, USFOR-A Civil Affairs Branch comments on Recommendation B.3 were responsive, and the stated actions met the intent of the recommendation.



# Appendix A. Audit Scope and Methodology

We conducted this performance audit from May 2011 through May 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This is the third in a series of audits addressing internal controls over CERP payments made in Afghanistan. The scope of this third audit consisted of the three EAOs USFOR-A placed with USAID and paid for with CERP funds. We initiated this audit to address the control issues surrounding three EAOs identified during our second CERP audit which culminated in DoDIG Report No. DoDIG-2012-023, “Management Improvements Needed in Commander’s Emergency Response Program in Afghanistan,” November 21, 2011. USFOR-A (ordering agency) placed the three EAOs with USAID (servicing agency) in the fourth quarter of FY 2009. USFOR-A authorized the advancing of \$40.1 million in CERP funds to USAID to complete the work in the three EAOs. We contacted CENTCOM, USFOR-A, USAID, and the Defense Contract Audit Agency to obtain hard copy documentation to include the EAOs, task orders, task order modifications, payment vouchers, associated financial reports, vendor invoices, receiving reports, and pertinent correspondence to complete our evaluation of internal controls. We then evaluated each of the EAOs to determine if they complied with the applicable laws, guidance, and requirements for EAOs.

## Use of Computer-Processed Data

We did not assess the reliability of CERP data obtained from the Army Standard Financial System financial data for the three EAOs we reviewed because we reviewed the reliability of this data in a recent related audit.\* Although we concluded in this recent audit that USCENTCOM and USFOR-A did not report reliable data, this data did not affect our ability to accomplish our audit objective because we verified the payment data related to the three EAOs against hard copy documentation. We did assess the reliability of computer-processed EAO accounting data received from USAID. Specifically, we validated the reliability of the accounting data from Phoenix, USAID’s financial management system, by comparing the obligation and liquidation amounts to hard copy task order modifications and disbursement vouchers as it related to CERP projects. Overall, we determined the computer-processed data used during the audit was reliable enough to accomplish our audit objective.

---

\* DoDIG-2012-023 “Management Improvements Needed in Commander’s Emergency Response Program in Afghanistan,” November 21, 2011.

## **Appendix B. Prior Audit Coverage of Commander's Emergency Response Program and DoD Interagency Agreements**

During the last five years, the Government Accountability Office (GAO), Department of Defense Inspector General (DoD IG), the Army Audit Agency (AAA), the Special Inspector General for Iraq Reconstruction (SIGIR), the Special Inspector General for Afghanistan Reconstruction (SIGAR), and Department of State Inspector General (DoS IG) have issued 23 reports discussing CERP. In a joint effort, three reports were issued from DoD IG and DoS IG on DoD funds transferred to the Department of State. The DoD IG and DoS IG issued the reports separately, each with the respective agency's unique report numbers. Unrestricted GAO reports can be accessed over the Internet at <http://gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted Army reports can be accessed at <https://www.aaa.army.mil/>. Unrestricted SIGIR reports can be accessed at <http://www.sigir.mil/directorates/audits/auditReports.html>. Unrestricted SIGAR reports can be accessed over the Internet at <http://www.sigar.mil/auditReports.asp>. Unrestricted DoS IG reports can be accessed at <http://oig.state.gov/>.

### **GAO**

GAO Report No. GAO-09-0615, "Military Operations – Actions Needed to Improve Oversight and Interagency Coordination for the Commander's Emergency Response Program in Afghanistan," May 18, 2009

GAO Report No. GAO-08-736R, "Military Operations – Actions Needed to Better Guide Project Selection for Commander's Emergency Response Program and Improve Oversight in Iraq," June 23, 2008

GAO Report No. GAO-07-699, "Military Operations – The Department of Defense's Use of Solatia and Condolence Payments in Iraq and Afghanistan," May 23, 2007

### **DoD IG**

DoD IG Report No. DODIG-2012-023, "Management Improvements Needed in Commander's Emergency Response Program in Afghanistan," November 21, 2011

DoD IG Report No. D-2011-102, "Afghan National Police Training Program Would Benefit from Better Compliance with the Economy Act and Reimbursable Agreements," August 25, 2011

DoD IG Report No. D-2011-080, "DoD and DoS Need Better Procedures to Monitor and Expend DoD Funds for the Afghan National Police Training Program," July 7, 2011

DoD IG Report No. D-2010-042, "DoD Obligations and Expenditures of Funds Provided to the Department Of State for the Training and Mentoring of the Afghan National Police," February 9, 2010

DoD IG Report No. D-2008-082 "Summary Report on Potential Antideficiency Act Violations Resulting From DoD Purchases Made Through Non-DoD Agencies (FY 2004 Through FY 2007)" April 25, 2008

DoD IG Report No. D-2008-066 "FY 2006 and FY 2007 DoD Purchases Made Through the Department of Interior" March 19, 2008

### **ARMY AUDIT AGENCY**

AAA Report No. A-2010-0057-ALL, "Audit of Controls Over Vendor Payments - Southwest Asia" February 24, 2010

AAA Report No. A-2010-0012-ALL, "Audit of Controls Over Vendor Payments - Southwest Asia" January 5, 2010

AAA Report No. A-2006-0090-ALE, "Follow-up II Commanders Emergency Response Program and Quick Response Fund," March 31, 2006

AAA Report No. A-2005-0332-ALE, "Follow-up Commanders Emergency Response Program and Quick Response Fund," September 30, 2005

### **SIGIR**

SIGIR Report No. SIGIR-11-012, "Commander's Emergency Response Program Obligations Are Uncertain," January 31, 2011

SIGIR Report No. SIGIR-10-003, "Iraq Commander's Emergency Response Program Generally Managed Well, but Project Documentation and Oversight Can Be Improved," October 27, 2009

SIGIR Report No. SIGIR-08-006, "Commander's Emergency Response Program in Iraq Funds Many Large-Scale Projects," January 25, 2008

SIGIR Report No. SIGIR-07-006, "Management of the Commander's Emergency Response Program in Iraq for Fiscal Year 2006," April 26, 2007

SIGIR Report No. SIGIR-05-025, "Management of the Commander's Emergency Response Program for Fiscal Year 2005," January 23, 2006

SIGIR Report No. SIGIR-05-014, "Management of the Commander's Emergency Response Program for Fiscal Year 2004," October 13, 2005

### **SIGAR**

SIGAR Report No. 11-7, "Commander's Emergency Response Program in Laghman Province Provided Some Benefits, but Oversight Weaknesses and Sustainment Concerns, Led to Questionable Outcomes and Potential Waste," January 27, 2011

SIGAR Report No. 09-5, "Increased Visibility, Monitoring, and Planning Needed for Commander's Emergency Response Program in Afghanistan," September 9, 2009

**DoS IG**

DoS IG Report No. AUD/CG-11-44, “Afghan National Police Training Program Would Benefit from Better Compliance with the Economy Act and Reimbursable Agreements,” August 25, 2011

DoS IG Report No. AUD/CG-11-30, “DoD and DoS Need Better Procedures to Monitor and Expend DoD Funds for the Afghan National Police Training Program,” July 7, 2011

DoS IG Report No. MERO-A-10-06, “DoD Obligations and Expenditures of Funds Provided to the Department Of State for the Training and Mentoring of the Afghan National Police,” February 9, 2010

## Appendix C. Summary of Potential Monetary Benefits

Recommendation	Type of Benefit	Amount of Benefit	Account
B.2	Economy and Efficiency. The Government could better use these funds for needed projects.	\$17.6 million	Operation and Maintenance, Army

# Under Secretary of Defense (Acquisition, Technology, and Logistics) Comments



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JUN 15 2012

MEMORANDUM FOR MEMORANDUM FOR PROGRAM DIRECTOR, FINANCIAL  
MANAGEMENT AND REPORTING,  
OFFICE OF THE INSPECTOR GENERAL, DOD

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS *ms 6/15/12*

SUBJECT: Response to DoDIG Draft Report on DoD Needs to Improve Controls Over  
Economy Act Orders with U.S. Agency for International Development (Project No.  
D2011-D000FL-0218.000)

As requested, I am providing the Department's response to A.2.a. and A.2.b., contained  
in the subject report.

### Recommendation A.2.a.:

We recommend the Under Secretary of Defense (Acquisition, Technology, & Logistics) revise  
the DoD Federal Acquisition Regulation Supplement to require that DoD agencies use either a  
reimbursement process or a direct cite when establishing EAOs with the non-DoD agencies.

### Response:

Concur: The Under Secretary of Defense (Comptroller)/Chief Financial Officer establishes the  
Department's financial policy pertaining to reimbursable and direct cite basis for Economy Act  
Orders in the DoD Financial basis to use for both ordering and payment of Economy Act Orders.  
The Director, Defense Procurement and Acquisition Policy will coordinate with  
USD(Comptroller) to ensure the DFARS properly references the DoD FMR as the appropriate  
policy mechanism for financing Economy Act Orders with the non-DoD agencies. The target  
date for implementation is October 1, 2012.


### Recommendation A.2.b.:

We recommend the Under Secretary of Defense (Acquisition, Technology, & Logistics) revise  
the DoD Federal Acquisition Regulation Supplement to include procedures on how to properly  
monitor interagency acquisitions. At a minimum, these procedures should include collection and  
maintenance of project documentation such as contracts, task orders, statements of work,  
modifications, accounting data, payment vouchers, invoices, relevant correspondence, and  
contract completion and closeout paperwork.

### Response:

Partially Concur: The Director, Defense Procurement and Acquisition Policy, will update PGI to  
include a section on how to properly monitor interagency acquisitions. The target date for  
implementation is October 1, 2012.

Please contact Action Officer [REDACTED], or  
[REDACTED] if additional information is required.

[REDACTED]  
 Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

## Under Secretary of Defense (Comptroller)/Chief Financial Officer, DoD Comments



COMPTROLLER

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

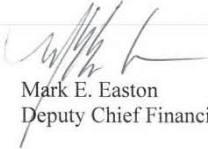
June 18, 2012

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDITING, DEPARTMENT  
OF DEFENSE OFFICE OF INSPECTOR GENERAL

SUBJECT: Response to Draft Audit Report, "DoD Needs to Improve Controls Over Economy  
Act Orders with U.S. Agency for International Development"  
(Project No. D2011-D000FL-0218.000)

This memorandum responds to recommendations made to the Under Secretary of  
Defense (Comptroller)/Chief Financial Officer in the subject Department of Defense (DoD)  
Office of Inspector General (OIG) draft report. We concur with your recommendations to revise  
advance payments guidance, and note that the *DoD Financial Management Regulation* is already  
up to date with the subject guidance as of February 2008. Detailed responses to the  
recommendations are attached.

Thank you for the opportunity to review and comment on the draft audit report. My staff  
point of contact is [REDACTED] Reach [REDACTED] or at  
[REDACTED].

  
Mark E. Easton  
Deputy Chief Financial Officer

Attachment:  
As stated

Attachment



**OFFICE OF THE UNDER SECRETARY OF DEFENSE (COMPTROLLER)  
(OUSD(C)) RESPONSES TO RECOMMENDATIONS**

**DEPARTMENT OF DEFENSE (DOD) OFFICE OF INSPECTOR GENERAL (OIG)  
DRAFT REPORT, "DOD NEEDS TO IMPROVE CONTROLS OVER ECONOMY  
ACT ORDERS WITH U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT"  
(DOD PROJECT NO. D2011-D000FL-00218.000)**

**RECOMMENDATION A.1.a:** We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer coordinate with the Under Secretary of Defense for Acquisition, Technology, and Logistics to: a. Revise the Defense Federal Acquisition Regulation Supplement to clearly state that advance payments are not allowed for Economy Act Orders with non-DoD agencies.

**RESPONSE A.1.a:** Concur. The Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) will coordinate with the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (OUSD(AT&L)) to assist Defense Procurement and Acquisition Policy (DPAP) with citing in the Defense Federal Acquisition Regulation Supplement (DFARS) a reference to *DoD Financial Management Regulation* (DoDFMR) Volume 11A, Chapter 3, the appropriate policy mechanism directing DoD Components to stop advancing funds to non-DoD agencies.

**RECOMMENDATION A.1.b:** We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer coordinate with the Under Secretary of Defense for Acquisition, Technology, and Logistics to: b. Revise DoD 7000.14-R, "DoD Financial Management Regulation" guidance to clearly state that advance payments are not allowed for Economy Act Orders with non-DoD agencies.

**RESPONSE A.1.b:** Concur. As noted in the draft report, in a March 1, 2007, policy memorandum, OUSD(C) directed all DoD Components to stop advancing funds to non-DoD federal entities unless specifically authorized by law, legislative action, or Presidential authorization. The policy memorandum was coordinated with OUSD(AT&L), posted on the DPAP website at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html), and incorporated in the DoDFMR February 2008 update to Volume 11A, Chapter 3, "Economy Act Orders." These actions were initiated in March 2007 and completed in February 2008, and comply with the OIG recommendation.

Attachment

**RECOMMENDATION A.1.c:** We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer coordinate with the Under Secretary of Defense for Acquisition, Technology, and Logistics to: c. Revise DoD Instruction 4000.19 guidance to clearly state that advance payments are not allowed for Economy Act Orders with non-DoD agencies.

**RESPONSE A.1.c:** Concur. OUSD(C) will coordinate with OUSD(AT&L) to assist the Deputy Under Secretary of Defense for Installations and Environment with citing in DoD Instruction 4000.19 a reference to DoDFMR Volume 11A, Chapter 3, the appropriate policy mechanism directing DoD Components to stop advancing funds to non-DoD agencies.

## U.S. Central Command Comments



UNITED STATES CENTRAL COMMAND  
7115 SOUTH BOUNDARY BOULEVARD  
MACDILL AIR FORCE BASE, FLORIDA 33621-5101

4 June 2012

CCIG

TO: DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: DoDIG Draft Report, Project No. D2011-D000FL-0218.000, "DoD Needs to Improve Controls over Economy Act Orders with U.S. Agency for International Development," dated 18 May 2012

1. USCENTCOM has reviewed the draft report and has provided a consolidated response to the concerns identified by the DODIG assessment of the "DoD Needs to Improve Controls over Economy Act Orders with U.S. Agency for International Development."
2. Attached are responses from USFOR-A J9 and Commander CENTCOM Joint Theater Support Contracting Command.
3. My Point of Contact regarding this matter is [REDACTED] USCENTCOM Assistant Inspector General, [REDACTED]

  
DUANE T. RACKLEY  
GS-15, USAF Civilian  
Executive Director

Attachments:

TAB A: USFOR-A J9 Response

TAB B: C-JTSCC



CENTCOM JOINT THEATER SUPPORT CONTRACTING COMMAND  
CAMP AS SAYLIYAH  
APO AE 09898



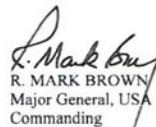
CJTSCC-CG

0 4 JUN 2012

MEMORANDUM FOR USCENTCOM CCIG-AA

SUBJECT: C-JTSCC Response to Recommendations in DoDIG Draft Report, Project No. D2011-D000FL-0218.000, "DoD Needs to Improve Controls Over Economy Act Orders with U.S. Agency for International Development," dated 18 May 2012

1. The CENTCOM Joint Theater Support Contracting Command (C-JTSCC) was tasked to respond only to the recommendations for C-JTSCC in the subject report. The draft report contains three recommendations for this command. We concur with each recommendation.
2. The first recommendation is to revise our Command Acquisition Instructions to include guidance on the proper development of Economy Act Orders. We will revise our Instructions within 90 days.
3. The second recommendation is to establish a quality control oversight program for Economy Act orders. We note that the draft report recommendation at A.2.b., page 14, recommends that OSD/ATL revise the DFARS to "include procedures on how to properly monitor interagency acquisitions." We will comply with the DFARS when it is updated to include procedures on monitoring Economy Act orders. In the meantime, this command will maintain a log of Economy Act orders and we will establish an oversight program to meet the seven specific recommendations included in the draft report.
4. We concur with the third recommendation to consider not transferring future Commander's Emergency Response Program and Afghanistan Infrastructure Funds to Department of State or U.S. Agency for International Development until adequate controls are in place for Economy Act Orders.

  
R. MARK BROWN  
Major General, USA  
Commanding

# U.S. Forces-Afghanistan Comments



HEADQUARTERS  
UNITED STATES FORCES-AFGHANISTAN  
KABUL, AFGHANISTAN  
APO AE 09356

MEMORANDUM FOR RECORD

4 June 2012

SUBJECT: Response to Draft Report D2011-D000FL-0218.000

**Recommendation A.4:** We recommend the Commanding General, United States Forces – Afghanistan revise USFOR-A Publication 1-06 (Money As A Weapon System-Afghanistan) to include procedures for proper monitoring of projects being completed by interagency acquisitions.

**Response:** Concur. USFOR-A published an annual revision to the MAAWS-A CERP SOP in March 2012, prior to the release of the above recommendation from the draft DODIG audit. The DOD 7000.14-R Volume 12, Chapter 27 (CERP chapter in the financial management regulation) is currently under revision with expected publish date in the near future. The new revision of the DODFMR is anticipated to change CERP policy language and authorized categories, causing a need for an interim change or revision to the MAAWS-A CERP SOP. In addition, the current draft DODFMR chapter (v13, May 2012) contains the following new language in regard to interagency acquisitions:

"If USFOR-A executes CERP projects using another agency pursuant to the Economy Act, USFOR-A will ensure compliance with FAR subpart 17.5 and FMR Vol 11A, Chapter 3. USFOR-A also remains responsible for monitoring project execution, including monitoring management of funds provided via military inter-departmental purchase requests (MIPRs). Direct fund cite MIPRs are to be used for Economy Act orders involving contracting transactions and USFOR-A is responsible for ensuring the funds are used in accordance with CERP legislation, all relevant CERP guidance including this FMR, and that executing agencies return any unused funds 30 days prior to expiration."

When an interim change or revision of the MAAWS-A CERP SOP is accomplished (after DODFMR guidance is published), procedures for monitoring interagency acquisition will be included that falls in line with and compliments the DODFMR language.

**Recommendation B.3:** We recommend the Commanding General, U.S. Forces-Afghanistan coordinate with United States Agency for International Development to establish controls to better track the disposition of Commander's Emergency Response Program funds, ensure their legal use and monitor changes in scope.

**Response:** Concur. CERP theater program managers will develop a policy letter detailing procedures for interagency acquisitions for future projects. The policy letter will reiterate regulatory guidance from the DoDFMR and MAAWS-A CERP SOP and state that CERP funding must be executed in accordance with DOD regulation regardless of executing agency. In addition, the policy letter will highlight historical problem areas in utilizing economy act orders as identified in this DODIG audit. CERP theater program managers will research in the CIDNE database and coordinate with contacts from USAID to identify CERP projects currently "in-progress" that are being executed by economy act order through USAID. The identified projects will be reviewed to determine approved use of CERP funds, disposition, and any changes to scope occurring during project execution.

  
BRYAN A. GROVES  
COLONEL, CA  
USFOR-A J9



# Assistant Secretary of the Army (Financial Management and Comptroller) Comments



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY  
FINANCIAL MANAGEMENT AND COMPTROLLER  
109 ARMY PENTAGON  
WASHINGTON DC 20310-0109

JUN 15 2012

MEMORANDUM THRU Auditor General, Department of the Army, 3101 Park Center Drive, Alexandria, Virginia 22302-1596

FOR Inspector General, Department of Defense, Defense Business Operations, 400 Army Navy Drive, Arlington, Virginia 22202-4704

SUBJECT: Draft Report, DoD Needs to Improve Controls Over Economy Act Orders with U.S. Agency for International Development (D2011-D000FL-0218.000)

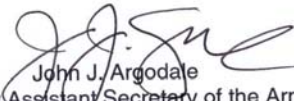
1. We appreciate the opportunity to provide comments on the subject report.
2. The audit asserts that in Fiscal Year 2009, the U.S. Forces-Afghanistan (USFOR-A) improperly transferred \$40.1M in Commander's Emergency Response Program (CERP) funding to the U.S. Agency for International Development (USAID) in support of bridge projects, winter maintenance and road construction in apparent violation of 31 U.S.C. 1301(a) and the Antideficiency Act (ADA). The audit makes the following recommendations:
  - a. Recommendation B.1
    - Report a potential ADA violation and initiate a preliminary investigation in accordance with DoD Regulation 7000.14-R, "Financial Management Regulation," Volume 14, Chapter 3
    - If the investigation determines that a reportable ADA violation has occurred, conduct a formal investigation to determine responsible officials and recommend appropriate corrective actions.
    - Submit formal report to Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer and provide results to the DoD Office of Inspector General.
  - b. Recommendation B.2 -- Coordinate with the Inspector General, United States Agency for International Development in order to perform a joint investigation of the potential \$9.6 million Antideficiency Act violation of the Bona Fide Needs Rule and of the potential \$17.6 million Antideficiency Act violation of the Recording Statute.
3. Army generally concurs.
  - a. We are directing the U.S. Army Central Command (ARCENT) to report a potential ADA violation and initiate a preliminary investigation in accordance with DoD Regulation 7000.14-R, "Financial Management Regulation," Volume 14, Chapter 3. This investigation will require USFOR-A to coordinate with Comptroller, USAID for the return of unused funds

SUBJECT: Draft Report, DoD Needs to Improve Controls Over Economy Act Orders with U.S. Agency for International Development (D2011-D000FL-0218.000)

that were accepted under the Economy Act. This investigation will be completed by September 30, 2012.

b. If the investigation determines that a reportable ADA violation has occurred, we will conduct a formal investigation to determine responsible officials and recommend appropriate corrective actions, to include requiring ARCENT to coordinate with USAID and USFOR-A to establish controls to better track the disposition of CERP funds, ensure their legal use and monitor changes in project scope. Upon completion of the formal investigation, we will submit the formal report to OSD (Comptroller) and provide results to the DoD Office of Inspector General.

4. My point of contact for this report is [REDACTED] who can be reached at [REDACTED], email: [REDACTED]

  
John J. Argodale  
Deputy Assistant Secretary of the Army  
(Financial Operations)



# Inspector General Department of Defense